

The State of South Carolina



Office of the Attorney General

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August 4, 1987

Representative T. W. Edwards, Jr.
Chairman
Joint Legislative Committee on Energy
Post Office Box 11867
Suite 104 Blatt Building
Columbia, South Carolina 29211

Dear Representative Edwards:

You have requested an opinion whether the Consolidated Procurement Code would apply to a lease agreement between a state agency and a private firm by which the state agency would obtain an energy utilization management system, and further where the lease would provide that the state agency would pay the private firm no more than the amount of money which the state agency would save by using the system. It is our opinion, based on these facts as stated, that the Procurement Code would most probably apply.

This Office has previously advised that, in determining the applicability of the Procurement Code, a transaction must be examined in its entirety, and that a particular transaction may not necessarily be exempted from the competitive bidding provisions of the Procurement Code simply because no additional State funds are expended by a particular state agency. Op. Atty. Gen., No. 84-8 (January 24, 1984). More particularly, if a state agency grants a private firm the exclusive right to earn a profit through a contract between the parties, most probably a Court would conclude that the Procurement Code would apply. See Signacon Controls, Inc. v. Mulroy, 298 N.E.2d 670, 673 (C.A.N.Y., 1973).

Representative T. W. Edwards, Jr.
Page 2
August 4, 1987

For these reasons it is our opinion that the competitive purchasing provisions of the Consolidated Procurement Code would most probably apply to this contract.

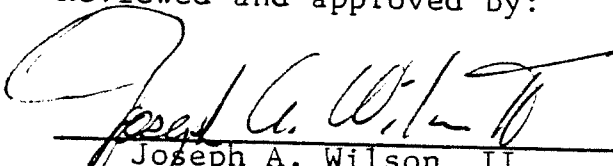
Sincerely yours,




David C. Eckstrom
Assistant Attorney General

DCE:tgc

Reviewed and approved by:


Joseph A. Wilson, II
Chief Deputy Attorney General

Reviewed and approved by:


Robert D. Cook
Executive Assistant for Opinion